

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs March 9, 2007

**KENNETH JONES v. TENNESSEE DEPARTMENT OF CORRECTION**

**Appeal from the Chancery Court for Davidson County**  
**No. 04-580-III Ellen Hobbs Lyle, Chancellor**

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**No. M2004-01713-COA-R3-CV - Filed on April 27, 2007**

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An inmate appeals the Chancery Court's dismissal of his Petition for Writ of Certiorari based on improper venue and the court's decision to not transfer the case to the proper venue. Finding that the Chancery Court did not abuse its discretion, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Kenneth A. Jones, Whiteville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Arthur Crownover II, Senior Counsel, for the appellee, Tennessee Department of Correction.

**OPINION**

Kenneth Jones was incarcerated in the Hardeman County Correctional Facility in Whiteville, Tennessee when he was accused of attempting to intimidate employees and threatening an employee at the Hardeman County Correctional Facility (HCCF). He was afforded a disciplinary hearing before the disciplinary board. Following the hearing, Jones was found guilty of the offenses and punished accordingly. Being dissatisfied with the ruling and punishment, Jones filed a Writ of Certiorari in which he contends his constitutional rights were violated during this hearing because the disciplinary board was not fair and impartial in its review of his case. The parties named as defendants included Howard Cook, the Commissioner of Operations of the Tennessee Department of Corrections, along with Glenn Turner, Fontella, Mason, Charlotte Strugis, Ladon Chearis, and James Ester, all of whom were at the time employees of the HCCF.<sup>1</sup>

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<sup>1</sup>The Hardeman County Correctional Facility is a private for-profit prison run by Corrections Corporation of America.

Instead of filing his Petition for Writ of Certiorari in Hardeman County, where HCCF was located and the incidents at issue occurred, Jones filed his Petition with the Davidson County Chancery Court. The HCCF defendants filed a Motion to Dismiss on March 25, 2004. Defendant Cook filed a Motion to Dismiss on March 29, 2004. The basis of each motion was improper venue.

The Davidson County Chancellor considered the motions and response thereto, following which the Chancellor concluded that Davidson County was not the proper venue. The Chancellor also noted that the court could transfer the case to the proper county if it chose to do so in its discretion; however, the Chancellor declined to do so because Jones had failed to comply with the requirements for filing a lawsuit on numerous occasions. Instead, the Chancellor dismissed the case without prejudice. It is from this Order that Jones appeals.

#### ANALYSIS

Jones first argues that Davidson County is the proper venue. We find no merit to this argument. Tenn. Code Ann. § 41-21-803 expressly provides that except as otherwise provided by law, “an action that accrued while the plaintiff inmate was housed in a facility operated by the department shall be brought in the county in which the facility is located.” Tenn. Code Ann. § 41-21-803. Moreover, we have previously determined that “Petitions for Writ of Certiorari seeking judicial review of decisions of the Board must be brought in the county where the prison is located.” *Hawkins v. Tenn. Dep’t of Corrs.*, 127 S.W.3d 749, 766-767 (Tenn. Ct. App. July 2002). We therefore affirm the Chancellor’s determination that the appropriate venue for this Petition was Hardeman County.

Jones’ other issue is that the trial court should have transferred the case to Hardeman County instead of dismissing the Petition. The Chancellor’s decision not to transfer the case from Davidson County to Hardeman County was based upon Tenn. Code Ann. § 16-1-116, which states:

Notwithstanding any other provision of law or rule of court to the contrary, when an original civil action, an appeal from the judgment of a court of general sessions, or a petition for review of a final decision in a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, is filed in a state or county court of record or a general sessions court and such court determines that it lacks jurisdiction, the court shall, *if it is in the interest of justice*, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was originally filed. Upon such a transfer, the action or appeal shall proceed as if it had been originally filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it was transferred.

Tenn. Code Ann. § 16-1-116 (emphasis added).

As we have stated before, transfers pursuant to this statute are not automatic. *Turner v. State*, 184 S.W.3d 701, 705 (Tenn. Ct. App. 2005)(citations omitted). Rather, the trial court “may determine, in its discretion, whether the transfer is warranted.” *Id.* Under the abuse of discretion standard, a trial court’s ruling “will be upheld so long as reasonable minds can disagree as to the propriety of the decision made.” *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). A trial court abuses its discretion only when it “applies an incorrect legal standard, or reaches a decision which is against logic or reasoning or that causes an injustice to the party complaining.” *Id.* The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Id.*

The record provides significant insight in to the reasons the Chancellor declined to transfer the case to Hardeman County. Those reasons are set forth in the Order wherein the Chancellor granted the defendant’s motions to dismiss and denied the transfer request.

The Chancellor first noted that “the petitioner had failed to comply with the filing requirements for lawsuits filed by inmates. The petitioner has now complied such that the deficiencies in his filing have been cured.” The Chancellor went on to state:

Secondly the defendants have filed motions to dismiss. The individual defendants have filed a motion to dismiss for improper venue or to transfer the matter to Hardeman County. The office of the Attorney General has filed a motion to dismiss on behalf of respondent Howard Cook because the petition is not verified and does not state that it is the first application for a writ.

The petitioner has now amended his petition and had it notarized to cure the deficiency that it was not verified. The Court has reviewed the amended petition and cannot, however, find any statement in there that this is the first application for the writ of certiorari. Additionally, the Court determines that venue does lie in this case in Hardeman County as per Tennessee Code Annotated section 41-21-803.

Taking into account that the inmate filed this petition in the incorrect venue and that the statute gives this Court discretion to either dismiss the matter or transfer it and in consideration that the petition was not originally verified and that the petition still does not state that it was the first application for the writ, the Court determines that it is proper to dismiss the case. *Ordinarily, the Court would simply transfer the case where venue was improper in this court, but in this matter, time and time again, the petitioner has failed to comply with the requirements of filing a lawsuit: first, noncompliance with filing a partial payment of the filing fee and sufficient copies of the complaint and failing to file a certified copy of the inmate trust account; then failing to have the petition notarized; failing to file the petition in the correct venue; and still failing to state that this is a first application for the writ. Based upon all of these deficiencies, the Court dismisses the above-captioned*

*matter without prejudice for refiling in the proper venue.* Court costs are taxed to the petitioner. (emphasis added)

The decision to dismiss the case without prejudice instead of transferring the case to Hardeman County was a discretionary determination. That discretionary determination was based upon and a consequence of Jones' previous acts and omissions. The Chancellor applied the correct legal standard, as is evident from her reference to and application of Tenn. Code Ann. § 16-1-116, and we are unable to conclude that she reached a decision which is against logic or reasoning or that causes an injustice to Jones, the party complaining. Having examined the Chancellor's decision by applying the principles set forth in *Eldridge*, we find no abuse of discretion.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Petitioner Kenneth Jones.

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FRANK G. CLEMENT, JR., JUDGE